IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

APPEAL FROM ORDER NO.1114 OF 2005

WITH

CIVIL APPLICATION NO.1371 OF 2005

Sudin Dattaram Chauhan. ...Appellant.

Vs.

Maharashtra Housing and Area Development Authority. ... Respondent.

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Mr.B.P.Shukla for the Appellant.

Mr.V.B.Sakhare, AGP for the Respondent.

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**CORAM : DR.D.Y.CHANDRACHUD, J.**

December 19, 2005.

**P.C. :**

The Learned Trial Judge dismissed the motion challenging the issuance of a notice by the Maharashtra Housing and Area Development Authority. A notice was issued on 15th February 2003 that the Appellant had constructed a Hair Cutting Saloon admeasuring 3.40 m. x 2.70 m. unauthorisedly on a Storm Water Drain and partly on a plot of land

belong to MHADA. The Appellant submitted a reply on 18th February 2003 upon which an order has been passed by the Executive Engineer. The Executive Engineer has come to the conclusion that the structure is unauthorised and that none of the documents which has been submitted by the Appellant shows that the structure was constructed prior to the cut off date of 1-1-1995. The Learned Trial Judge has declined to grant interim relief. At the hearing of the appeal against an interlocutory order, Counsel appearing on behalf of the Appellant submitted that the Appellant has a Ration Card which is issued on 12th November 1994 which is prior to the cut off date of 1.1.1995.

This document has been considered by the Trial Judge. Ex-facie the Ration Card shows the address as of Om Sai Super Market, Siddhi Vinayak Society, Mahavir Nagar, Kandivli. The structure of the Appellant is claimed to be situated opposite the Super Market and there is, in my view, justification in the finding of the Trial Court that the structure in question is not reflect in the Ration Card. The Shops and Establishments Certificate is of the year 2001. The electoral roll is of 30th November 2000. The census certificate is similarly based on a census

conducted in August 2000. There is merit in the submission of MHADA that since the business of the hair cutting saloon has been conducted in the premises, the date on which Shops and Establishments Certificate was issued would indicate that the structure has been constructed after the datum line. Having perused all the documents which have been relied upon, I am of the view that the Learned Trial Judge was justified in coming to the conclusion that the documents do not show the existence of the structure prior to the datum line of 1-1-1995. In the circumstances, there is no merit in the appeal which is accordingly dismissed.

In view of the disposal of the appeal, the Civil Application does not survive and is accordingly disposed of.